

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE JOINT APPLICATION OF CONTEL)	
CELLULAR OF KENTUCKY B, INC. AND)	
LITCHFIELD COUNTY CELLULAR, INC.)	
FOR APPROVAL TO TRANSFER AND)	CASE NO. 94-006
ACQUIRE CONTROL OF THE CELLULAR)	
TELEPHONE UTILITY IN KENTUCKY RURAL)	
SERVICE AREA NO. 11)	

O R D E R

This matter arising upon the joint petition of Contel Cellular of Kentucky B, Inc. and Litchfield County Cellular, Inc. ("Litchfield Cellular"), filed February 22, 1994, pursuant to 807 KAR 5:001, Section 7, for confidential protection of the exchange value of assets contained in the asset exchange agreement of the parties on the grounds that disclosure of the information is likely to cause competitive injury, and it appearing to this Commission as follows:

In this proceeding Contel requested permission to transfer assets used in providing domestic public cellular radio telecommunications service in Kentucky Rural Service Area No. 11 to Litchfield Cellular. In support of the application, the parties filed an asset exchange agreement containing in part the exchange value of the assets transferred by this petition. Contel and Litchfield Cellular seek to protect those values as confidential.

KRS 61.872 requires information filed with the Commission to be available for public inspection unless specifically exempted by statute. Exemptions from this requirement are provided in KRS

61.878 (1). All such exemptions must be strictly construed. KRS 61.871.

KRS 61.878 (1) exempts 11 categories of information. One category exempted pursuant to KRS 61.878 (1) (c) is information confidentially disclosed to the Commission. To qualify for that exemption, the petitioner must establish that disclosure of the information would permit an unfair commercial advantage to competitors of the party from whom the information was obtained. To satisfy this test, the party claiming confidentiality must demonstrate actual competition and a likelihood of substantial competitive injury if the information is disclosed. Competitive injury occurs when disclosure of the information gives competitors an unfair business advantage.

Contel and Litchfield Cellular state that they face both actual and potential competition. First Kentucky Cellular Corporation has also been authorized to provide cellular service in Kentucky Rural Service Area #11 by the Federal Communications Commission and also by this Commission. Furthermore, cellular companies face competition from providers of substitute services such as convention, mobile telephone service, paging service, and dispatch service. Additional competition may soon exist from specialized mobile radio service and personal communications service. The petitioners argue that competitors could use the information sought to be protected to structure their rates or market their services in such a way as to preclude Litchfield Cellular from competing effectively for customers. They also state

that they have protected the confidentiality of the information through all appropriate means.

While disclosure of the exchange value of the assets transferred from Contel to Litchfield Cellular may give competitors some insight into the value Contel and Litchfield Cellular place on those assets, it does not affect the ability of the petitioners or their competitors to compete for the acquisition of business. Furthermore, much of the information petitioners seek to withhold will in fact be ascertainable from annual reports which must be filed with the Commission and are available for public inspection. A similar conclusion was reached by the Commission in Case No. 93-118.¹ Therefore, no competitive harm has been established, and the petition for protection from disclosure should be denied.

This Commission being otherwise sufficiently advised,

IT IS ORDERED that:

1. The petition for confidential treatment of information concerning the value of assets transferred from Contel to Litchfield Cellular pursuant to the acquisition of the cellular telephone utility in Kentucky Rural Service Area #11 is hereby denied.

2. The information sought to be protected from disclosure shall be held as confidential and proprietary for a period of 20 days from the date of this Order, at the expiration of which it

¹ Case No. 93-118, The Joint Application of Telephone Data and Systems, Inc., United States Cellular Corporation and Tsaconas Cellular, Inc. for Approval of the Acquisition of Tsaconas Cellular, Inc. by Telephone Data and Systems, Inc. and the Transfer to United States Cellular Corporation, Order dated June 10, 1993.

shall be placed in the public record without further Order of the Commission.

Done at Frankfort, Kentucky, this 23rd day of January, 1995.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director